

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

CLAIMANT: Elaine M. Hume

OBJECTOR: Montana State Board of Land Commissioners

NOTICE OF INTENT TO APPEAR: Elliott Ranch LLC; Joseph
P. Nelson

CASE 41I-0067-R-2023

41I 11138-00

NOTICE OF FILING OF MASTER’S REPORT

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

MASTER'S REPORT

Claim 41I 11138-00 appeared in the Preliminary Decree for the Missouri River Above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is owned by Elaine M. Hume. The State of Montana Board of Land Commissioners (SBLC) objected to the claim. Elliott Ranch LLC and Joseph P. Nelson filed notices of intent to appear. The claim also received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41I 11138-00 was decreed as a claim for fish raceways in the N2NW of Section 26, T5N, R2E, Broadwater County. SBLC objected to the claim, stating:

This claim has never been perfected and should be withdrawn.

The claimed fish raceways project (POU) is on State property and has never been completed or used.

2. The claim also received the following issue remarks:

THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PRIORITY DATE IS QUESTIONABLE. CASE 921, BROADWATER COUNTY, DOES NOT SPECIFY A MONTH OR DAY BUT DECREED THE RIGHTS AS 'CONTEMPORANEOUS & WITHOUT PRIORITY AS BETWEEN SAID PARTIES'. THE CLAIMS FOLLOWING THIS STATEMENT ALL CLAIMED MAY 23, 1869. 41I 11117-00, 41I 11120-00, 41I 11121-00, 41I 11122-00, 41I 11123-00, 41I 11124-00, 41I 11125-00, 41I 11126-00, 41I 11127-00, 41I 11128-00, 41I 11129-00, 41I 11130-00, 41I 11131-00, 41I 11132-00, 41I 11133-00, 41I 11134-00, 41I 11135-00, 41I 11136-00, 41I 11137-00, 41I 11138-00, 41I 11139-00, 41I 11140-00, 41I 11141-00, 41I 11142-00.

IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE FISH RACEWAYS PROJECT WAS NEVER COMPLETED OR USED.

THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIMS EXAMINATION RULES.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 2700.35 ACRE-FEET PER YEAR.

3. Notes from an interview with Robert Davis, who filled out the statement of claim for claim 41I 11138-00, state:

FISH RACEWAYS - MR. DAVIS SAID THIS PROJECT WAS PROPOSED AFTER JULY 1, 1973. THIS PROJECT WAS NEVER COMPLETED OR USED. MR. DAVIS SAID THESE CLAIMS SHOULD BE TERMINATED. I SENT MR. DAVIS TERMINATION FORMS ON NOV 23, 1988. ON 9-27-90 MR. DAVIS WAS IN THE HELENA FIELD OFFICE AND TOOK WITH HIM TERMINATION FORMS FOR THESE CLAIMS.

4. These notes, combined with the statements in SBLC's objection, indicate this claim was never perfected.

5. Claimant is deceased and the contact information available to the Court is undeliverable. No ownership updates are pending in the DNRC database.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. The objection and issue remarks overcome the prima facie status of the claim. The evidence in the claim and case files shows claim 41I 11138-00 was never perfected.

RECOMMENDATION

1. Claim 41I 11138-00 should be dismissed.

A post decree abstract of the water right claim reflecting the recommended dismissal is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Elaine M Hume
Deceased
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(undeliverable)

Service via Electronic Mail

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Notice: Service List Updated 6.14.24

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 11138-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: ELAINE M HUME
-
BOZEMAN, MT 59718-3602

Priority Date:

Type of Historical Right:

Purpose (Use): FISH RACEWAYS

Flow Rate:

Volume:

Source Name: SPRING, BIG SPRINGS

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.